



607.18 Non-Compliant Inmates

Number Series: 600—Corrections Division

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607.18-1 Scope

This Standard Operating Procedure shall apply to all Corrections personnel of the Hendry County Sheriff's Office.

607.18-2 Policy

It is the policy of the HCSO Corrections Division to provide guidelines, training and direction to Certified Detention Deputies for engaging and escalation or de-escalation of the level of force applied to non-compliant groups or individual inmates.

607.18 -3 Purpose

The Use of Force Guidelines are a set of guidelines established to assist Hendry County Sheriff's Office Deputy Sheriff's in their decision-making process regarding the appropriate use of force.

607.18-4 Discussion

The most important purpose of law enforcement is the protection of human life. In order to be consistent with that purpose, the use of deadly force must be limited to situations involving the protection of human life. Sheriff's Office Deputies shall use only that degree of force necessary to effectively bring a subject and/or situation under control. All Sheriff's Office personnel shall familiarize themselves with Florida State Statute 776, Justifiable Use of Force, and insure their knowledge and application of the Statute in both Non-Deadly and Deadly Force issues. All policies of the Hendry County Sheriff's Office regarding the use of force guidelines, use of deadly force and use of non-deadly force will be given to each sworn member of the department. Each of these policies will be issued prior to authorization to carry any firearm or weapon. These policies will be signed for and training will be given.

607.18-5 Definitions

- a. **Compliance** is the verbal and/or physical yielding to an officer's authority without apparent threat of resistance or violence.
- b. **Escalation** is increasing the use of force or resistance.
- c. **De-escalation** is decreasing the use of force or resistance.

- d. **Disengagement** is discontinuing a command or physical use of force. Officers are legally permitted to escalate their use of force as the subject escalates his or her level of resistance. The officer's choices are determined by the subject's actions and the risk of physical harm posed to the officer or others. Once the officer achieves control or compliance, he or she must de-escalate the use of force. Under certain circumstances, disengagement may be the best tactical option, for example, when the officer is waiting for backup, when the officer is injured or outnumbered, or when the suspect has superior firepower.
- e. **Passive resistance** is a subject's verbal and/or physical refusal to comply with an officer's lawful direction causing the officer to use physical techniques to establish control.
- f. **Active resistance** is a subject's use of physically evasive movements directed toward the officer such as bracing, tensing, pushing, or pulling to prevent the officer from establishing control over the subject.
- g. **Aggressive resistance** is a subject's attacking movements toward an officer that may cause injury but are not likely to cause death or great bodily harm to the officer or others.
- h. **Deadly force resistance** is a subject's hostile, attacking movements with or without a weapon that create a reasonable perception by the officer that the subject intends to cause and has the capability of causing death or great bodily harm to the officer or others.

607.18-6 Procedures

1. Use of Force Guidelines

- a. Chapter 776, F.S. governs all use of force by criminal justice officers. Even though the statute refers to "law enforcement" officers, the legal guidelines regarding use of force apply equally to corrections and correctional probation officers. The statute identifies two general areas in which an officer's use of force is justified: to apprehend a subject and make an arrest, or to defend self or others.
 - b. Section 776.05, F.S. addresses the issue of an officer using force to make an arrest:
 - c. A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance—or threatened resistance to the arrest.
 - d. The officer is justified in the use of any force:
 - 1. Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;
 - 2. When necessarily committed in retaking felons who have escaped; or
 - 3. When necessarily committed in arresting felons fleeing from justice.
- However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

- a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or
- b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person.

2. Objective Reasonableness

a. The courts have used the term *objective reasonableness* to describe the process for evaluating the appropriateness of an officer's response to a subject's resistance. Appropriate force is the amount of force reasonably necessary to make an arrest. The U.S. Supreme Court said in *Graham v. Connor*, 490 U.S. 386 (1989), that the reasonableness of a particular use of force must be judged from the perspective of how a reasonable officer on the scene would respond, rather than from the 20/20 perspective of hindsight. To determine if an officer's actions were objectively reasonable, the courts look at the facts and circumstances the officer knew when the incident occurred. Courts recognize that criminal justice officers must make split-second judgments about the amount of force needed in a particular situation under circumstances that are tense, uncertain, and rapidly evolving.

b. Subject Resistance Levels

i. **Passive resistance** is a subject's verbal and/or physical refusal to comply with an officer's lawful direction causing the officer to use physical techniques to establish control.

1. Some examples of passive resistance include the following:

- a. The subject refuses to move at the officer's direction.
- b. The subject peacefully protests at a political event in a public location.
- c. The subject refuses to take his hands out of his pockets or from behind his back.

ii. **Active resistance** is a subject's use of physically evasive movements directed toward the officer such as bracing, tensing, pushing, or pulling to prevent the officer from establishing control over the subject.

1. Some examples of active resistance include the following:

- a. The subject physically anchors himself to a person or object to prevent himself from being removed.
- b. The subject braces or pulls away from the officer when the officer grips the subject's arm.
- c. The subject attempts to run when the officer touches or attempts to grab the subject's arm or shoulder.

iii. **Aggressive resistance** is a subject's attacking movements toward an officer that may cause injury but are not likely to cause death or great bodily harm to the officer or others.

1. Some examples of aggressive resistance include the following:

- a. The subject balls up his fist and approaches the officer.
- b. The subject pushes the officer back as the officer tries to take the subject into custody.
- c. The subject grabs any part of the officer's body.

iv. **Deadly force resistance** is a subject's hostile, attacking movements with or without a weapon that create a reasonable perception by the officer that the subject intends to cause and has the capability of causing death or great bodily harm to the officer or others.

1. Some examples of deadly force resistance include the following:

- a. A subject refuses to drop a knife when ordered to by the officer and moves toward the officer.
- b. A subject shoots or points a gun at an officer or other person.
- c. A subject tries to run an officer down in a vehicle.

c. Officer Response Options

Officers should try to resolve a situation with the least amount of force necessary. Command presence and verbal communication often will defuse many volatile situations. Sometimes, however, these are not enough or officers may not have an opportunity to use them. An officer may have to use physical force to gain control of the situation. Physical force includes physical control, the use of nonlethal weapons, and deadly force. Officers need not apply force in gradually increasing steps in order to justify physical control or even deadly force. Instead, officers need to respond with all the force reasonably necessary for the circumstances in each specific situation.

a. **Command Presence** is essentially presenting yourself as someone in authority, trusted and respected. This is partially done through the message conveyed by how you look, how you carry yourself, how you act, and how you speak.

b. **Verbal Dialogue** is a two-way controlled, non-emotional communication between the Deputy and the subject aimed at problem identification and resolution

c. **Verbal Direction** occurs when a Deputy tells or commands a subject to engage in, or refrain from, a specific action

d. **Physical control** is achieving compliance or custody through the use of empty-hand or leverage-enhanced techniques, such as pain compliance, transporters, restraint devices, takedowns, and striking techniques.

e. **Defensive Force** is a weapon that is not fundamentally designed to cause death or great bodily harm. Some examples of Defensive Force include dart-firing stun guns such as a TASER®, expandable batons, flashlights, and chemical agent sprays.

f. **Deadly force** is force that is likely to cause death or great bodily harm.

- i. Some examples of deadly force include use of a firearm, eye gouges, empty-hand strikes to the throat, and impact-weapon strikes to the side of the neck.

g. Section 776.06, F.S. states:

- 1. The term "deadly force" means force that is likely to cause death or great bodily harm, and includes, but is not limited to:
 - i. The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

- ii. The firing of a firearm at a vehicle in which the person to be arrested is riding.

h. **Section 776.07, F.S., states:**

- a. A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.
- b. Use of deadly force may be an officer's first and only appropriate response to a perceived threat. Deadly force does not necessarily mean that someone died from the force used.
- c. It can cause great bodily harm or no harm at all. For example, returning fire is deadly force even if the officer misses the target.
- d. The officer must base his or her decision to use deadly force as a defensive tactic on a clear, reasonable belief that he or she, a fellow officer, or another person, faces imminent danger of death or great bodily harm.

i. **Factors for Deciding the Use of Deadly Force**

- a. Officers use three criteria for making deadly force decisions: ability, opportunity, and intent.
 - a. **Ability** refers to the subject having the means to carry out his or her intent to cause death or great bodily harm. An officer must determine whether the subject has the necessary means to cause death or great bodily harm to the officer or others. A weapon is not required; a subject must only have the apparent ability to carry out his or her intention. If the subject seems physically able to cause death or great bodily harm, then he has the ability. For example, a 6'4", 250-lb. muscular man threatening to do bodily harm to an officer does not necessarily need a weapon. By virtue of his size and physical condition, he has the apparent ability.
 - b. **Opportunity** means the subject is capable of carrying out an intention to cause death or great bodily harm to the officer or others. The subject's weapon often determines opportunity. For example, a suspect armed with a knife may not be an immediate threat to an officer standing far away. However, the same person standing closer or carrying a firearm certainly has the opportunity to carry out his intent to cause death or great bodily harm.
 - c. **Intent** is a reasonably perceived, imminent threat to an officer or another person based on the subject's actions, behaviors, words, or other indicators. It is a perception derived from the totality of the circumstances.
 - d. Officers should use the amount of force necessary and reasonable for the situation. If ability, opportunity, and intent

are present and the officer cannot control the threat using lesser means, then deadly force is justified. When resistance de-escalates, so must the officer's response.

e. Totality of Circumstances

- a. Totality of circumstances is a term the court uses to refer to all facts and circumstances known to the officer at the time or reasonably perceived by the officer as the basis for a use of force decision. The courts will look at the totality of circumstances in determining whether the decision was objectively reasonable and, therefore, legally justified. The totality of circumstances includes consideration of the subject's form of resistance, all reasonably perceived factors that may have an effect on the situation, and the response options available to the officer.
- b. Some situational factors may include the following:
 1. Severity of the crime
 2. Subject is an immediate threat
 3. Subject's mental or psychiatric history, if known to the officer
 4. Subject's violent history, if known to the officer
 5. Subject's combative skills
 6. Subject's access to weapons
 7. Innocent bystanders who could be harmed
 8. Number of subjects versus number of officers
 9. Duration of confrontation
 10. Subject's size, age, weight, and physical condition
 11. Officer's size, age, weight, physical condition, and defensive tactics expertise
 12. Environmental factors, such as physical terrain, weather conditions, etc.

f. The Force Guidelines (see chart) recognizes that officers make use of force decisions based on the totality of circumstances at the time of the incident. Circumstances are fluid and dynamic. Formulating a valid response requires continual assessment as the situation changes.

g. Subject resistance

- a. Is the subject verbally or physically resisting my lawful authority?
- b. Is the subject making attacking movements that are not likely to cause death or great bodily harm?
- c. Is the subject making attacking movements that are likely to cause death or great bodily harm?

h. Situational Factors

- a. What subject factors influence this situation? A weapon, physical size, demeanor, others?
- b. What officer factors influence this situation? Training or lack of, experience, physical size, others?
- c. What environmental factors influence this situation? Weather, location, presence of others?
- i. **Officer's Response**
 - a. Can I physically control the subject?
 - b. Could I use a nonlethal weapon not meant to cause death or great bodily harm?
 - c. Is deadly force the appropriate option to prevent death or great bodily harm to myself or others?
- j. **Justification**
 - a. Were my actions reasonable based on the subject's resistance and the totality of the circumstances?
 - b. Am I able to articulate the reasons for my actions?
 - c. Was I in compliance with constitutional and state laws, agency policy, and training?

<u>Subject Resistance</u>	<u>Situational Factors</u>
Is the subject verbally or physically resisting my lawful authority?	What subject factors influence this situation? Weapon? Physical size? Demeanor? Others?
Is the subject making attacking movements that are not likely to cause death or great bodily harm?	What officer factors influence this situation? Training, experience, physical size? Others?
Is the subject making attacking movements that are likely to cause death or great bodily harm?	What environmental factors influence this situation? Weather, location, presence of others?

<u>Justification</u>	<u>Officer's Response</u>
-	-
<u>Were my actions reasonable based on the subject's resistance and the totality of the circumstances?</u>	<u>Can I physically control the subject?</u>
-	-
<u>Am I able to articulate the reasons for my actions?</u>	<u>Could I use a non lethal weapon not meant to cause death or great bodily harm?</u>
-	-
<u>Was I in compliance with constitutional and state laws, agency policy, and training?</u>	<u>Is deadly force the appropriate option to prevent death or great bodily harm to myself or others?</u>

NOTE – The application of restraint devices without the use of force by the Deputy will not require the completion of a Assailant Control but shall require the completion of an Incident Report.

607.18-7 Additional Considerations in Determining Response to Resistance

- A. **The Non-Compliant Inmate Officer Response Options** is meant to be used as a guideline for a Deputy to select effective reasonable and legal response options in a verbal or physical encounter.
 - 1. As a subject increases the level from verbal to physical, a Deputy may have to increase the level of response until the resistance ceases and the Deputy is able to gain control of the subject.
 - 2. As soon as the point of subject compliance is reached, the Deputy must de-escalate the response level to the minimum force necessary to control the subject.
- B. In properly determining the appropriate response to a subject's resistance, physical factors of the subject should be evaluated by the Deputy.
 - 1. An unarmed small framed, female, juvenile subject may be displaying Level 5 resistance, but would probably only require a Level 3 response by the average Deputy.
 - 2. A single Deputy faced with a very large professional wrestler or football player may very well find that the response to even mild resistance must be escalated to a relatively high point on the matrix.
 - 3. A Deputy need not retreat in efforts to lawfully control a subject, but may utilize the amount of response necessary to accomplish the task; this is not to say that retreat in the face of overwhelming odds may not be a wise choice.
- C. Additional factors to be considered when making non-compliance inmate decisions include:
 - 1. **SUBJECT FACTORS:**

- a. Seriousness of violation committed by the subject
 - b. Size, age, and weight of subject
 - c. Apparent physical ability of subject
 - d. Number of subjects present who are involved, or who may become involved
 - e. Weapons possessed by or available to the subject
 - f. Known history of violence by subject
 - g. Whether the subject can be recaptured at a later time
 - h. Whether evidence is likely to be destroyed
2. **DEPUTY FACTORS:**
- a. Size, physical ability and defensive tactics expertise
 - b. Number of Deputies present or available
 - c. Immediate reaction in the case of sudden attack
 - d. Weapons or restraint devices available to the Deputy
 - e. Legal requirements
 - f. HCSO policy

607.18-8 Group Non-Compliance – Code Blue

- A. Roving Deputies not otherwise involved with the direct supervision of an inmate(s) shall respond to the area of the announced CODE.
- B. No single Deputy shall enter the area of a CODE without the available back-up of additional Deputies.
- C. Responding Deputies shall begin lockdown of all inmates. Inmates not assigned to cells shall be placed in the nearest occupied cell.
 - 1. Individual inmates who refuse lockdown shall be handled according to the Deputy Response Matrix.
 - 2. Mass refusal of the lockdown order, may be cause for Deputies to deploy Oleoresin Capsicum to control the non-compliant inmates.
- D. Inmates shall be allowed to continue fighting until a squad (three Deputies minimum) can be deployed to separate the combatants. Lone Deputies are discouraged from separating combatants beyond the issuance of verbal commands, because of the high potential for Deputy injury.
- E. Combatants who refuse to stand down shall be subject to the Deputy Response Matrix.

607.18-9 Group Non-Compliance – Code Blue (Deputy Involved)

- A. Roving Deputies not otherwise involved with the direct supervision of an inmate(s) shall respond to the area of the announced CODE.
- B. Deputy may enter the area of a CODE without the available back-up of additional Deputies.
- C. First responding Deputies shall recover the Deputy involved in the altercation because of the high potential for Deputy injury.
- D. Inmate refusal to stand-down shall be subject to a Level 3, 4, or 5 response of the Deputy Response Matrix.
- E. Additional Deputies shall lockdown all inmates. Inmates not assigned cells shall be placed in the nearest occupied cell.

1. Individual inmates who refuse to lockdown shall be handled according to the *Officer Response Options*.
2. Mass refusal of the lockdown order, shall be cause for Deputies to deploy Oleoresin Capsicum to control the non-compliant inmates.

REFERENCES